

# HALL & ASSOCIATES

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September 11, 2020

## **Via FOIA Online**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
Facsimile: (202) 566-2147

### **RE: Freedom of Information Act Request for all Records Regarding EPA's "Case-by-Case" Approach to the *Iowa League of Cities* Decision**

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

### **Background**

On September 4, 2020, EPA submitted a clarification letter to FOIA request EPA-HQ-2020-006465 that stated "EPA did not view a case-by-case approach for addressing issues in the *Iowa League of Cities* outside the Eighth Circuit to constitute a non-acquiescence decision." (Attachment).

### **Request**

This request seeks any and all records that discuss what the "case-by-case approach for addressing issues in the *Iowa League of Cities* outside the Eighth Circuit" means regarding the application and/or implementation of that decision outside the Eighth Circuit.

Please limit this request to the time frame June 2013 through December 2014.

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Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$50.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the address above. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Sincerely,

Erin Thomas  
Hall & Associates



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF GENERAL COUNSEL

September 4, 2020

Erin Thomas  
Hall & Associates  
Suite 220  
1629 K Street, NW  
Washington, DC 20006-4033

Re: Freedom of Information Act Request EPA-HQ-FOIA-HQ-2020-006465

Dear Ms. Thomas:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on August 20, 2020. In it, you requested certain records, specifically:

- “1. Any and all communications within EPA or between EPA and DOJ that advised or discussed that the decision to nonacquiesce to the Iowa League of Cities decision should not be put in writing.
2. Any and all records that discuss whether any version of the recently released document 1(a) (attachment 2) should be publicly released.
3. Any and all records that discuss whether any version of the recently released document 1(b) (attachment 3) should be publicly released.
4. Any and all communications between OGC and DOJ regarding how EPA’s decision to nonacquiesce to the Iowa League of Cities ruling may affect the D.C. Circuit matter, *Center for Regulatory Reasonableness v. EPA* (Case No. 14-1150).”

EPA has begun the coordination of and search for responsive records in our files. At this time, I am requesting a clarification of your requests as follows:

- “1. Any and all communications within EPA or between EPA and DOJ that advised or discussed that the decision to nonacquiesce to the *Iowa League of Cities* decision should not be put in writing.”

As you are aware, EPA did not view a case-by-case approach for addressing issues in the *Iowa League of Cities* outside the Eighth Circuit to constitute a non-acquiescence decision. The U.S. District Court for the District of Columbia concluded that it did. See 315 F.Supp.3d 519, 527, 535 (D.D.C. 2018). Thus, please clarify whether your request for documents with respect to whether a decision to take a case-by-case approach should not be put in writing refers to the

statement that “DOJ cautions that any formal expression of non-acquiescence runs the risk of a challenge” in the October 29, 2013 email you have attached. Please also provide a time period for your search.

“2. Any and all records that discuss whether any version of the recently released document 1(a) (attachment 2) should be publicly released.

3. Any and all records that discuss whether any version of the recently released document 1(b) (attachment 3) should be publicly released.”

Please provide a time period for these requests.

“4. Any and all communications between OGC and DOJ regarding how EPA’s decision to nonacquiesce to the Iowa League of Cities ruling may affect the D.C. Circuit matter, Center for Regulatory Reasonableness v. EPA (Case No. 14-1150).

Please clarify that “EPA’s decision to nonacquiesce to the Iowa League of Cities decision” refers to the case-by-case approach EPA took outside the Eighth Circuit and that you are asking for communication between OGC and DOJ on how the approach might affect the D.C. Circuit case. Please provide a time period for this request.

The processing clock is stopped for your FOIA request until we receive your response to the clarification of the four parts of your FOIA request. After we receive your clarification response, we will provide you with (1) an estimate of fees associated with processing your request and, if necessary, request a written assurance of payment for any amount exceeding the amount of your initial assurance of payment, and (2) an estimated timeframe for completing the request.

If you would like to modify or narrow your request so that it may be processed sooner, please contact me at [witt.richard@epa.gov](mailto:witt.richard@epa.gov).

Sincerely,

//s//

Richard T. Witt  
Office of General Counsel  
Water Law Office